157-113

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

NO., 169.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

MONROE SALISBURY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED MAY 16, 1891.

(14646.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 169.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

MONROE SALISBURY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print
Complaint	1	1
Exhibit A.—Contract	19	5
Statement of account	39	11
Exhibit B.—Subcontract	40	12
Exhibit C.—Affidavit of contractor	43	12
Exhibit D.—Statement	45	13
Summons	49	15
Marshal's return	50	15
Demurrer	51	16
Order sustaining demurrer	56	17
Judgment	58	17
Clerk's certificate to judgment roll	60	18
Clerk's certificate to record	61	18
Writ of error	63	19
Citation	65	20
Proof of service of citation	66	20

1 *Complaint.*

In the United States circuit court, ninth circuit, district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MONROE SALISBURY, DEFENDANT.

The United States of America, the plaintiff above named, by its attorney, S. G. Hilborn, esq., complains against Monroe Salisbury, the defendant herein, and for cause of complaint shows the court:

I.

That on the 15th day of March, 1878, one James B. Price, as principal, and Thomas B. Price and James T. Ryle, as sureties, entered into a written contract with the plaintiff, acting in that behalf through and by D. M. Key, Postmaster-General, in which said contract the said James B.
2 Price agreed and undertook, for and in consideration of the sum of $2,840.00 per year, to carry the United States mail upon the route then known as No. 38155, being the route from Antelope Springs, in the State of Colorado, by way of San Juan, Jennison, and Howardsville, to Silverton in the same State, and back three times a week for and during the term of four years, beginning on the 1st day of July, 1878, and ending on the 30th day of June, 1882.

That the said contract was subject to and contained written therein among other things, certain conditions, stipulations, and agreements, all of which are contained in copy of said contract hereto annexed, marked Exhibit A, and made a part hereof.

That the said contract, after being duly executed by the said James B. Price and by the sureties above named, and duly accepted and
3 approved by the plaintiff, through and by said D. M. Key, Postmaster-General, as aforesaid, was and now is on file in the Post-Office Department of the United States.

That by a certain order made by the Postmaster-General on the 18th day of July, 1878, which said order was fully agreed to and accepted by the said James B. Price, the service upon said route was increased and the compensation increased to $5,680 per annum, thereby amending, changing, and altering said contract.

That on the 1st day of October, 1878, the said James B. Price sublet and subcontracted the carrying of the mail on the said route No. 38155 to the defendant, Monroe Salisbury, for the remainder of the contract term hereinbefore mentioned, as appears by a certain subcontract in writing, duly signed and sealed by the said James B. Price and the said Monroe
4 Salisbury, of which said subcontract a copy is hereto annexed, marked Exhibit B, and made a part thereof.

That in pursuance of the contract hereinbefore mentioned, between this plaintiff and the said James B. Price, he, the said Price, on the 1st day of July, 1878, entered upon the performance of the service therein contracted for in a manner acceptable to this plaintiff, and continued to perform said service until the 1st day of October, 1878, from and after which last

mentioned date the said service was performed by the said defendant, Monroe Salisbury, under and by virtue of the subcontract hereinbefore mentioned.

That from and after the said 1st day of October, 1878, the said subcontract was duly recognized by the Postmaster-General, and such
5 sums as were and became due and payable under and by virtue of the original contract between the plaintiff and James B. Price, as afterwards amended, altered, and changed, were paid to the said defendant, Monroe Salisbury.

II.

That for the purpose of facilitating and expediting the service of carrying the United States mail between Antelope Springs and Silverton, and the intermediate places set forth and mentioned in the said contract, the said Postmaster-General, by a certain order made on the 11th day of February, 1879, did agree and contract with the said James B. Price to expedite the said mail service by shortening the schedule of departures and arrivals on the said route on and after February 17, 1879.

That in pursuance of the order made by said Postmaster-General,
6 as aforesaid, the running time on said route was reduced from 34 hours to 18 hours in summer, and 24 hours in winter, and an additional sum was allowed for such expedition or increase of speed of $5,680.00 per annum, said allowance being made in supposed accordance with the provisions of law as contained in section 3961 of the Revised Statutes of the United States.

III.

That the said James B. Price consented to the terms and conditions set forth and mentioned in said order relative to the expediting of the said service upon the line of said route, and by reason of said agreement and consent to the terms and conditions set forth and mentioned in said order upon the part of the said James B. Price, the original contract,
7 executed by the said Price upon the 15th day of March, 1878, was and became amended, altered, and changed; and the said contract so amended, altered, and changed was accepted by the said James B. Price, and by the defendant, Monroe Salisbury, acting for and under him.

IV.

That the said defendant, Monroe Salisbury, did, by means of certain false and fraudulent representations, set forth in a certain sworn statement, signed and sworn to by the said defendant, Monroe Salisbury, on the 27th day of December, 1878, and presented to the Postmaster-General, relative to the expediting and facilitating of the service of carrying the mail on the route aforesaid, procured said order, made by the said Postmaster-General, on the 11th day of February, 1879, thereby
8 amending, altering, and changing said original contract.

That the said defendant, Monroe Salisbury, falsely and fraudulently stated and represented in said sworn statement, so made by him and presented to the Postmaster-General, as aforesaid, that for the purpose of performing the mail service six times a week upon the said route, No. 38155, from Antelope Springs to Silverton, on the then existing schedule of 33 and 34 hours, it would require 6 men and 12 horses; and

that to perform said service upon a reduced schedule of 18 hours in summer and 24 hours in winter, would require 12 men and 24 horses.

That the additional allowance for expedition or increase of speed, made by the Postmaster-General, as aforesaid, was made solely upon the
9 basis of the said statement signed and sworn to on the 27th day of December, 1878, by the said defendant, Monroe Salisbury, which said statement was presented by or on behalf of the said defendant to the Postmaster-General, and a copy of which is hereto annexed, marked Exhibit C and made a part of this complaint.

V.

That the said representations, so made in said sworn statement by the said defendant Monroe Salisbury, were wholly false and fraudulent in this: That it was therein alleged that to perform the service of carrying the mail on the said route upon the schedule of 33 and 34 hours six times per week would require 6 men and 12 horses, and that to perform said service upon a reduced schedule of 18 hours in summer and 24
10 hours in winter would require 12 men and 24 horses, thereby making it to appear that the said proposed change of schedule would involve and render necessary an increase in the number of men and horses required to perform said service upon said route of 100 per cent; which said allegation was false and was designed to mislead and did mislead the Postmaster-General.

Whereas, in truth and in fact, neither the said James B. Price nor the defendant Monroe Salisbury ever required or used any greater number of men or horses in carrying the mail upon said route upon the expedited schedule than were required to perform said service upon the original
11 schedule, nor did the increase of speed involve or necessitate any increase whatever in the number of men and horses required to perform said service.

That by means of the said statements and representations so falsely and fraudulently made by the said Monroe Salisbury, and by means of false and fraudulent vouchers presented to the Post-Office Department, the said defendant Monroe Salisbury was paid by and received from this plaintiff a larger sum than he was lawfully entitled to receive for the performance of mail service under said contract as amended, altered, and changed as aforesaid; that the sum so received by the said defendant from this plaintiff by means of said statements and representations, so falsely and fraudulently made, and said false and fraudulent vouchers
12 presented to the Post-Office Department, as aforesaid, from the 1st day of October, 1878, to the 31st day of July, 1882, was $18,460.68; and the said sum so received was in excess of the amount which the said defendant was legally entitled to receive for the service performed by him, the said defendant.

That the said sum of $18,460.68 has been demanded by the plaintiff from the said defendant, but he, the said defendant, has utterly failed, neglected, and refused, and still does fail, neglect, and refuse to pay the said sum or any part thereof.

Wherefore plaintiff demands judgment against defendant for the said sum of $18,460.68, with interest thereon, from the 31st day of July, 1882, at the rate of six per centum per annum, together with the costs of this suit.

13 2ND COUNT.

And for a further cause of action said plaintiff alleges that the said defendant Monroe Salisbury on the 31st day of July, 1882, was indebted to the said plaintiff in the sum of eighteen thousand four hundred and sixty dollars and sixty-eight cents for so much money by the said defendant, before that time had and received to and for the use of the said plaintiff, which said sum of money the said plaintiff avers was then due and payable, yet the said defendant, although often requested so to do, has not, paid said sum of money nor any part thereof.

Wherefore plaintiff demands judgment against defendant for the said sum of eighteen thousand four hundred and sixty dollars and sixty-eight cents, with interest thereon from the 31st day of July, 1882, at
14 the rate of six per centum per annum, together with the costs of this suit.

3RD COUNT.

And for a further cause of action the said plaintiff alleges that from and after the 1st day of July, 1878, up to and including the 30th day of June, 1882, one James B. Price was the contractor for carrying the United States mail upon the route then known as No. 38155, from Antelope Springs, in the State of Colorado, by way of San Juan, Jennison, and Howardsville, to Silverton, in the same State, and from and after the 1st day of October, 1878, the said defendant Monroe Salisbury was the subcontractor under the said James B. Price for carrying the said mail upon the said route.

15 That on the 11th day of February, 1879, an order was made by the Postmaster-General to take effect on the 17th day of February, 1879, expediting the schedule and decreasing the running time for carrying the mail on said route from 34 hours to 18 hours in summer and 24 hours in winter, and making an additional allowance therefor of $5,680.00 per annum, in supposed accordance with the provisions of law, as contained in section 3961 of the Revised Statutes of the United States.

That said order was made solely upon the basis of a certain statement prepared and sworn to by the said defendant on the 27th day of December, 1878, and presented to the Postmaster-General by or on behalf of the said defendant Monroe Salisbury, a copy of which said state-
16 ment is hereto annexed marked Exhibit C and made a part hereof.

The plaintiff further says, that the allegations in the said sworn statement, made by the said defendant and presented by or on his behalf to the Postmaster-General as aforesaid, were false and untrue, as the said defendant then and there well knew, in this: That it was therein alleged that the number of men and horses required to perform the mail service upon the said route six times per week upon the then existing schedule would be 6 men and 12 horses, and that upon the proposed schedule of 18 hours in summer and 24 hours in winter to perform the same service it would require 12 men and 24 horses; thereby making it to
17 appear that an increase would be required in the number of men and horses necessary to perform the mail service upon the said route by reason of the change of schedule aforesaid of 6 men and 12 horses, or 100 per cent.

Whereas, in truth and in fact, there was no increase whatever in the number of men and horses required or actually used in performing said mail service upon the expedited schedule over and above the number required and used in performing said service upon the original schedule. And the said false allegations were designed to mislead and did mislead the Postmaster-General.

And the plaintiff further says, that by reason of the said false allegation in the statement aforesaid, the plaintiff's officers were induced
18 to pay the moneys aforesaid from time to time, between the 17th day of February, 1879, and the 31st day of July, 1882, amounting in the aggregate to the sum of $18,460.68, which sum was paid by the plaintiff's officers to the defendant, as above set forth, in mistake of fact, and was received by the said defendant contrary to the provisions of section 3961 of the Revised Statutes of the United States. Said payments are more fully and at length set out in the statement hereto annexed, marked Exhibit D and made a part of this complaint. Said exhibit also shows the amount which said defendant was lawfully entitled to receive upon the basis of the stock and carriers actually employed.

Wherefore plaintiff demands judgment against the defendant
19 for the sum of $18,460.68, with interest thereon from the 31st day of July, 1882, at the rate of six per centum per annum, together with the costs of this suit.

S. G. HILBORN,
United States Attorney.
GEO. L. DOUGLASS,
Of Counsel.

Exhibit A.

POST-OFFICE DEPARTMENT,
Washington, D. C., Oct. 3rd, 1884.

I certify that the annexed is a true copy, taken from the files and records of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, the day and year above written.

[SEAL.] H. D. LYMAN,
Acting Postmaster-General.

20 1880–'84. United States of America, Jefferson City, Cole Co., Mo.

No. 38155. $2,840 per annum.

This article of contract, made the 15th day of March, eighteen hundred and seventy-eight, between the United States of America (acting in this behalf by the Postmaster-General) and James B. Price, contractor and [insert here names of sureties and their P. O. address], Thos. B. Price, of Pettis Co., Mo., and Jas. L. Ryle, of Jefferson City, Mo., as his sureties;

Witnesseth, That whereas James B. Price has been accepted, according to law, as contractor for transporting the mail on route No. 38155, from Antelope Springs, Colo., by San Juan, Jennison, and Howardsville, to Silverton and back, three times a week by a schedule satisfactory to the

Department, at two thousand eight hundred and forty dollars per
21 year, for and during the term beginning July first, eighteen hundred and seventy-eight, and ending June thirtieth, eighteen hundred and eighty-two; now, therefore, the said contractor and his sureties do, jointly and severally, undertake, covenant, and agree with the United States of America, and do bind themselves—

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule;
22 and in all cases to carry said mail in preference to passengers and freight, and to their entire exclusion if its weight, bulk, or safety shall so require; and that they will carry the mail, upon demand, by any conveyance which said contractor regularly runs, or is concerned in running on the route, beyond the number of trips above specified, in the same manner and subject to the same regulations as are herein provided touching regular trips.

2nd. To carry the mail in a safe and secure manner, free from wet or other injury, under a sufficient oilcloth or bearskin, if carried on a horse, and in a boot under the driver's seat, if carried in a coach or other vehicle.

3rd. To take the mail and every part thereof from, and deliever it and every part thereof at, each post-office on the route, or that may here-
23 after be established on the route (or on any route that may hereafter be established and to which this contract may be extended as hereinafter provided), and into the post-office at each end of the route, and into the post-office, if one is there kept, at the place at which the carrier stops for the night, and if no post-office is there kept, to lock it up in some secure place at the risk of the contractor.

They also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail, and his careful and faithful performance of the obligations assumed herein
24 and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-General; not to transmit, by themselves, or either of them, or either of their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mails, letters, packets, or newspapers, which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail; to carry post-office blanks, mail locks and bags, and other postal supplies, and also the special agents of the Department on the exhibition of their credentials, if a coach or other suitable conveyance is
25 used, without additional charge; to collect quarterly, if required by the Postmaster-General, of postmasters on the route, the balances due from them to the United States on their quarterly returns, and faithfully to render an account thereof to the Postmaster-General in the settlement

of the quarterly accounts of said contractor and to pay over to the Auditor of the Treasury for the Post-Office Department, on the order of the Postmaster-General, all balances remaining in his hands.

For which services, when performed, the said James B. Price, contractor, is to be paid by the United States the sum of two thousand eight hundred and forty dollars a year, to wit: Quarterly, in the months of November, February, May, and August, through the postmasters on the route
26 or otherwise, at the option of the Postmaster-General; said pay to be subject, however, to be reduced or discontinued by the Postmaster-General, as hereinafter stipulated, or to be suspended in case of delinquency.

It is hereby stipulated and agreed by the said contractor and his sureties that the Postmaster-General may discontinue or extend this contract, change the schedule and termini of the route, and alter, increase, decrease, or extend the service, in accordance with the law, he allowing a pro rata increase of compensation for any additional service thereby required, or for increased speed, if the employment of additional stock or carriers is rendered necessary; and, in case of decrease, curtailment, or dis-
27 continuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with and a pro rata compensation for service retained: Provided, however, that in case of increased expedition the contractor may, upon timely notice, relinquish the contract.

It is hereby also stipulated and agreed by the said contractor and his sureties as aforesaid, that they shall forfeit—

1. The pay of a trip when it is not run, and in addition, if no sufficient excuse for the failure is furnished, an amount not more than three times the pay of the trip.

2. At least one-fourth of the pay of a trip when the running is so far behind time as to fail to make connection with a depending
28 mail.

3. For violating any of the foregoing provisions touching the transmission of commercial intelligence more rapidly than by mail; or giving preference to passengers or freight over the mail or any portion thereof, or for leaving the same for their accommodation; or carrying, otherwise than in the mail, matter which should go by mail; or transporting persons engaged in so doing, with knowledge thereof, a penalty equal to a quarter's pay.

4. For violating any other provision of this contract touching the carriage of the mails, or the time and manner thereof, without a satisfactory explanation of the delinquency, in due time, to the Postmaster-
29 General, a penalty in his discretion. That these forfeitures may be increased into penalties of a higher amount, in the discretion of the Postmaster-General, according to the nature or frequency of the failure and the importance of the mail: Provided, that, except as herein otherwise specified, and except as provided by law, no penalty shall exceed three times the pay of a trip in each case.

And it is hereby further stipulated and agreed by the said contractor and his sureties that the Postmaster-General may annul the contract for repeated failures; for violating the postal laws; for disobeying the instructions of the Post-Office Department; for refusing to discharge a carrier

when required by the Department; for transmitting commercial intelligence or matter which should go by mail, contrary to the stipulations herein; for transportating persons so engaged as aforesaid; whenever the contractor shall become a postmaster, assistant postmaster, or member of Congress; and whenever, in the opinion of the Postmaster-General, the service can not be safely continued, the revenues collected, or the laws maintained on the road or roads herein.

And it is hereby further stipulated and agreed that such annulment shall not impair the right to claim damages from said contractor and his sureties under this contract, but such damages may, for the purpose of set-off or counterclaim in the settlement of any claim of said contractor or his sureties against the United States, whether arising under this contract or otherwise, be assessed and liquidated by the Auditor of the Treasury for the Post-Office Department.

And it is hereby stipulated and agreed by the said contractor and his sureties that this contract may, in the discretion of the Postmaster-General, be continued in force beyond its express terms for a period not exceeding six months, until a new contract with the same or other contractors shall be made by the Postmaster-General.

And this contract shall, in all its parts, be subject to the terms and requirements of the act of Congress approved April twenty-first, one thousand eight hundred and eight, entitled "An act concerning public contracts," and of the act of Congress approved June eighth, one thousand eight hundred and seventy-two, entitled "An act to revise, consolidate, and amend the statutes relating to the Post-Office Department."

In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be hereto affixed, and has attested the same by his signature, and the said contractor and his sureties have hereunto set their hands and seals the day and year set opposite their names, respectively.

D. M. KEY,
Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General in the presence of—

J. N. DORRIS.

And by the other parties in the presence of—

L. E. DAVISON,
W. H. PRICE,
Witnesses.

Signed this 4th day of April, 1878, J. B. PRICE, [SEAL.]
Contractor.

Signed this 8th day of " 1878, THOS. B. PRICE, [SEAL.]
Signed this 11th day of " 1878, JAS. L. RYLE, [SEAL.]
Sureties.

33 POST-OFFICE, JEFFERSON CITY, MO.,
April 13, 1884.

I hereby certify that Thos. B. Price, of Brownsville, Mo., and Jas. L. Ryle, of Jefferson City, Mo., are good and sufficient sureties for the amount of the foregoing contract.

OSCAR G. BURCH,
Postmaster.

The schedule of departures and arrivals:

Leave Antelope Springs Mon., Wed., and Fri., at 10:30 a. m.
Arrive at Silverton next days by 8:30 p. m.
Leave Silverton Mon., Wed., and Fri., at 5 a. m.
Arrive at Antelope Springs next days by 2 p. m.

Provided, that when more than seven minutes are taken for opening and closing the mails at any office, the surplus time so taken is to be allowed in addition to the time fixed in this schedule.

34 Certificate of the oath of mail contractors and carriers, required by act of Congress of June 8, 1872, as amended by act of March 5, 1874, 18th Stats., p. 19.

[Take this oath after signing the foregoing contract.]

I, J. B. Price, being "employed in the care, custody, and conveyance of the mail" as contractor on route No. 38155, from Antelope Springs to Silverton, State of Colorado, do swear that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post-roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control.

35 And I do further solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign or domestic, so help me God.

J. B. PRICE, *Contractor.*

COUNTY OF COLE,
State of Missouri, ss:

Sworn before the subscriber, a notary public for the county and State aforesaid, this 12th day of April, A. D. 1878; and I also certify that the person above named is above the age of twenty-one years, to the best of my knowledge and belief.

L. E. DAVISON, [SEAL.]
Notary Public.

Commission expires Jan'y 19, 1883.

NOTE.—When the oath is taken before a justice of the peace, or any other officer not using a seal, except a judge of a United States court, the certificate of the clerk of a court of record must be added, under his seal of office, that the person who administered the oath is duly
36 qualified as such officer.

Exhibit A.—Certificate F.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT.

I, R. F. Crowell, Auditor of the Treasury for the Post-Office Department, do hereby certify the annexed to be a true and correct statement from the records of this office of the account of J. B. Price, contractor for the transportation of the mails on route No. 38155, Colorado, from July 1, 1878, to June 30, 1882.

In testimony whereof I have hereunto signed my name and caused to be affixed my seal of office at the city of Washington, District of
37 Columbia, this third day of October, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] R. F. CROWELL,
Auditor.

Route.			Route.		
38155	To collections, 3rd qr., 1878	153.95	38155	By transportation, 3rd qr., 1878	$1,180.76
"	" deduction, " "	4.53	"	" " 4th " "	1,420.00
"	" part of warrant favor C. C. Bradley, assignee	700.00	"	" " 1st " 1879	2,324.59
"	" warrant favor A. N. Zevely, atty	322.28	"	" " 2nd " "	3,313.33
"	" deduction, 4th qr., 1878	4.53	"	" " 3rd " "	3,313.33
"	" warrant favor M. Salisbury, subcontr	1,415.47	"	" " 4th " "	3,313.33
"	" deduction, 1st qr., 1879	744.81	"	" " 1st " 1880	3,313.33
"	" warrant favor M. Salisbury, subcontr	1,579.78	"	" " 2nd " "	3,313.33
"	" deduction, 2nd qr., 1879	27.22	"	" " 3rd " "	3,313.33
"	" warrant favor M. Salisbury, subcontr	3,286.11			
"	" " " " "	3,313.33			
"	" deduction, 4th qr., 1879	640.85			
"	" warrant favor M. Salisbury, subcontr	2 672.48			
"	" deduction, 1st qr., 1880	1,546.30			
"	" fine " "	300.00			
"	" warrant favor M. Salisbury, subcontr	1,467.03			
"	" deduction, 2nd qr., 1880	760.18			
"	" warrant favor M. Salisbury, subcontr	2,553.15			
"	" deduction, 3rd qr., 1880	170.06			
"	" spl. agent's fare "	20.00			
"	" warrant favor M. Salisbury, subcontr	3,123.27			
	Forward	24,805.33			24,805.33

Rout			Route.		
38155	To am't brought forward	24,805.33	38155	By am't brought forward	24,805.33
"	" deduction, 4th qr., 1880	1,120.68	"	" transportation, 4th qr., 1880	3,313.33
"	" warrant favor M. Salisbury, subcontr	2,192.65	"	" " 1st " 1881	3,313.33
"	" deduction, 1st qr., 1881	338.23	"	" remission of deduction	120.59
"	" warrant favor M. Salisbury, subcontr	2,975.10	"	" "	149.36
"	" " " " "	269.95	"	" transportation, 2nd qr., 1881	3,313.33
"	" deduction, 2nd qr., 1881	79.35	"	" " 3rd " "	3,313.33
"	" fine "	200.00	"	" " 4th " "	3,313.33
"	" warrant favor M. Salisbury, subcontr	3,033.98	"	" " 1st " 1882	3,313.33
"	" deduction, 3rd qr., 1881	87.52	"	" " 2nd " "	3,313.33
"	" warrant favor M. Salisbury, subcontr	3,225.81			
"	" deduction, 4th qr., 1881	69.15			
"	" warrant favor M. Salisbury, subcontr	3,244.18			
"	" deduction, 1st qr., 1882	52.23			
"	" warrant favor M. Salisbury, subcontr	3,261.10			
"	" deduction, 2nd qr., 1882	17.02			
"	" warrant favor M. Salisbury, subcontr	3,296.31			
	Warrant 3977, New York, dated July 31, 1882	48,268.59			48,268.59

OFFICE OF THE AUDITOR OF THE TREASURY FOR THE POST-OFFICE DEPARTMENT,
Washington, D. C., October 2nd, 1884.

R. F. CROWELL, *Auditor.*

40 *Exhibit B.*

POST-OFFICE DEPARTMENT,
Washington, D. C., October 8, 1884.

I certify that the annexed is a true copy taken from the files and records of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post-Office Department to be affixed, the day and year above written.

[SEAL.] FRANK HATTON,
Acting Postmaster-General.

This article of agreement made this first day of October, A. D. 1878, between James B. Price, contractor, with the United States Post-Office Department for transporting the United States mails on route No. 38155 from Antelope Springs to Silverton, Colorado, of the one part, and
41 Monroe Salisbury, subcontractor, of the other part. Witnesseth that whereas the said Monroe Salisbury has been accepted as subcontractor for transporting the United States mails on said route No. 38155 from Oct. 1, 1878, to June 30, A. D. 1882, now, therefore the said Monroe Salisbury doth undertake, covenant, and agree with the said James B. Price, and by these presents hath undertaken, covenanted, and agreed to transport the United States mails on the above-named route, in strict conformity with his the said James B. Price's contract with the Post-Office Department, and also in accordance with the postal laws of the United States, the regulations of the Post-Office Department, and the orders of the
42 Postmaster-General, and that the said Salisbury will indemnify him, the said Price, against any and all fines, penalties, and losses, under his the said Price's contract, from the first day of October, A. D. 1878, to the thirtieth day of June, A. D. 1882.

In consideration of the above undertakings, covenants, and agreements of the said Monroe Salisbury, and to enable him to execute the same, the said James B. Price doth hereby give, assign, and set over to the said Monroe Salisbury the entire amount of pay that may become due him, the said James B. Price, as contractor on said route No. 38155, for the period commencing on the first day of October, A. D. 1878, and terminating June thirtieth (30th), A. D. 1882. This contract to be binding on the heirs and legal representatives of the parties thereto.

43 Witness, at the city of Washington, D. C., our hands and seals this first day of October, A. D. 1878.

(Signed) J. B. PRICE. [SEAL.]
(Signed) M. SALISBURY. [SEAL.]

Witness:
(Signed). A. N. ZEVELY.
(Signed). JOS. C. MCKIBBON.

Exhibit C. 38155

POST-OFFICE DEPARTMENT,
Washington, D. C., August 2nd, 1883.

I, A. D. Hazen, acting Postmaster-General of the United States of America, certify that the annexed is a true copy of the original sworn statement on file in this Department.

In testimony whereof I have hereto set my hand and caused the
44 seal of the Post-Office Department to be affixed, at the city of Washington, the day and year above written.

[SEAL.] A. D. HAZEN,
Acting Postmaster-General.

To perform service six times a week on route No. 38155, from Antelope Springs to Silverton, Colorado, on the present schedule time of thirty-three and thirty-four hours will require six men and twelve head of horses.

To perform the same service on a reduced schedule from thirty-three and thirty-four hours to eighteen hours in summer and twenty-four hours in winter, will require twelve men and twenty-four head of horses.

(Signed) M. SALISBURY.

Sworn to and subscribed before me, this 27th day of December, 1878.

(Signed) B. F. STEIGER,
Notary Public.

45 *Exhibit D.*

G. F. S. Oct. 8, 1884.

Route No. 38155. Antelope Springs to Silverton, Colorado. Contract term July 1, 1878, to June 30, 1882.

Contractor, James B. Price. Subcontr., M. Salisbury (from Oct. 1, 1878).

Cost of service was as follows:

From July 1, 1878, to July 31, 1878, @ $2,840.00 per annum	$239.24
" Aug. 1, 1878 " Feb'y 16, 1878 " 5,680.00 " "	3,103.07
" Feb'y 17, 1879 " June 30, 1882 " 13,253.33 " "	44,656.35
Total allowance per service	47,998.66
The Auditor settling by quarters made this less by	.02
	47,998.64

Deductions were made as follows:

Quarter ended Sep. 30, 1878	$4.53	
" " Dec. 31, "	4.53	
" " Mar. 31, 1879	741.81	
" " June 30, "	27.22	
" " Dec. 31, "	640.85	
" " Mar. 31, 1880	1,546.30	
" " " " (fine)	300.00	
" " June 30, 1880	760.18	
" " Sep. 30, "	170.06	
" " Dec. 31, "	1,120.68	
" " Mar. 31, 1881	338.23	
" " June 30, "	79.35	
" " " " (fine)	200.00	
" " Sep. 30, "	87.52	
" " Dec. 31, "	69.15	
Car'd for'd	6,093.41	
46 Deductions:		
Bro't for'd	$6,093.41	
Quarter ended Mar. 31, 1882	37.23	
" " " " " (fine)	15.00	
" " June 30, "	17.02	
Total deduction		$6,162.66

Remissions were make as follows:

Quarter ended Dec. 31, 1880	$120.59	
" " Mar. 31, 1881	149.36	
Total remission		$269.95
Total deduction not remitted		5,892.71

RECAPITULATION.

Total allowance for service	$47,998.64
Total deduction not remitted	5,892.71
Amount actually paid for service	42,105.93

47 Pay on the basis of stock and carriers actually employed would have been as follows:

From July 1, 1878, to July 31, 1878, @ $2,840,00 per annum	$239.24
" Aug. 1, 1878, " Feb'y 16, 1879, " 5,680.00 " "	3,103.07
" Feb'y 17, 1879, " June 30, 1882, " 6,626.66 " "	22,328.15
Total allowance on new basis	25,670.46

Deductions would have been as follows:

Quarter ended Sep. 30, 1878	$4.55	
" " Dec. 31, "	4.53	
" " Mar. 31, 1879	358.26	
" " June 30, "	13.60	
" " Dec. 31, "	260.65	
" " Mar. 31, 1880	195.00	
" " " " " (fine)	300.00	
" " June 30, "	108.84	
" " Sep. 30, "	4.53	
" " Dec. 31, "	489.78	
" " Mar. 31, 1881	99.77	
" " June 30, " (fine)	200.00	
" " Dec. 31, "	18.14	
" " Mar. 31, 1882	4.53	
" " " " " (fine)	15.00	
Total deduction on new basis		$2,077.18
48 Deduction (new basis) bro't for'd		$2077.18

Remissions were made as follows:

Quarter ended Dec. 31, 1880	$41.03	
" " Dec. 31, 1881	10.94	
Total remission on new basis		51.97
Total deduction less remission on new basis		2,025.21

RECAPITULATION.

Total allowance on new basis	$25,670.46
Total deduction less remission on new basis	2,025.21
Amount which should have been paid	25,645.25

FINAL RECAPITULATION.

Amount actually paid for service	$42,105.93
Amount which should have been paid	23,645.25
Amount to be recouped	18,460.68

(Endorsed:) Filed March 10, 1885. L. S. B. Sawyer, clerk.

49 *Summons.*

United States of America. Circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MONROE SALISBURY, DEFENDANT.

Action brought in the said circuit court, and the complaint filed in the office of the clerk of said circuit court, in the city and county of San Francisco.

The President of the United States of America, greeting: To Monroe Salisbury.

You are hereby required to appear in an action brought against you by the above-named plaintiff in the circuit court of the United States, ninth circuit, in and for the district of California, and to file your plea, answer, or demurrer, to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the clerk of said court, in the city and county of San Francisco, within ten days after the service on you of this summons—if served in this county; or if served out of this county, then within thirty days—or judgment by default will be taken against you.

The said action is brought to recover from you the sum of eighteen thousand four hundred and sixty $\frac{68}{100}$ dollars, money alleged to have been had and received by you and paid by said plaintiff to you by reason of your false and fraudulent representations, &c., together with interest thereon from the 31st day of July, 1882, at the rate of six per centum per annum, and the costs of this action, all of which is, in one, fully set out in the complaint on file herein, to which reference is hereby made; and if you fail to appear and plead, answer, or demur, as herein required, your default will be entered and the plaintiff will apply to the court for the relief demanded in the complaint herein.

Witness, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this tenth day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the 109th.

[SEAL.] L. S. B. SAWYER, *Clerk.*

50 UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF CALIFORNIA.

I hereby certify that I received the within writ on the 13 day of March, 1885, and personally served the same on the 1st day of April, 1885, by delivering to and leaving with Monroe Salisbury, said defendant named therein, personally, at the city and county of San Francisco, in

said district, a certified copy thereof, together with a copy of the complaint, certified to by L. S. B. Sawyer, clerk U. S. circuit court, attached thereto.

M. M. DREW,
U. S. Marshal,
By W. L. MCEWEN,
Deputy.

SAN FRANCISCO, *April 1st*, 1885.

(Endorsed:) No. 3630. U. S. circuit court, ninth circuit, district of California. The United States of America vs. Monroe Salisbury. Summons. S. G. Hilborn, plaintiff's attorney. Filed April 1, 1885. L. S. B. Sawyer, clerk, by F. D. Monckton, deputy clerk.

51 *Demurrer.*

In the United States circuit court, ninth circuit, district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MONROE SALISBURY, DEFENDANT. } No. 3630.

Now comes the defendant, Monroe Salisbury, and demurs to the complaint of plaintiff, filed herein, and specifies as grounds of demurrer:

1st. That the complaint does not state facts sufficient to constitute a cause of action against this defendant.

That the first cause of action therein attempted to be set out does not state facts sufficient to constitute a cause of action against this defendant.

That the second cause of action therein attempted to be set out
52 does not state facts sufficient to constitute a cause of action against this defendant.

That the third cause of action therein atttempted to be set out does not state facts sufficient to constitute a cause of action against this defendant.

2d. That there is a defect of parties defendant in the first cause of action in said complaint attempted to be set out, in this: That if any cause of action exists against this defendant, one James B. Price, who is alleged in said complaint to have entered into a certain contract with the plaintiff herein, on the 15th day of March, 1878, should be joined withthis defendant as a party defendant herein.

That there is a defect of parties defendant in the third cause of action in said complaint attempted to be set out, in this: That if any cause
53 of action exists against this defendant, one James B. Price, who is alleged in said complaint to have been the contractor upon the certain mail route set out and designated in said complaint should be joined with this defendant as a party defendant herein.

3d. That the first cause of action attempted to be set out in said complaint is ambiguous, unintelligible, and uncertain, in this:

(A) That it does not appear from said complaint what false and fraudulent vouchers, if any, were presented to the Post-Office Department, nor does it appear therefrom in anyway how, or in what manner, or by whom such false and fraudulent vouchers were made, if made at all,
54 or were presented to said Post-Office Department, if presented at all.

(B) That it does not appear from said complaint, or at all, how, or in what manner, the sum of $18,460.68, alleged to have been received by the

defendant, was in excess of the amount which the defendant was entitled to receive for mail service performed between the 1st day of October, 1878, and the 31st day of July, 1882, nor does it appear from said complaint, or at all, what amount the defendant was entitled to receive for such mail service, nor does it appear in said complaint in any manner, or at all, what amount the defendant did receive, if anything, for such mail service.

Therefore, the said defendant prays judgment to be dismissed
55 hence without day, and for his costs.

E. B. YOUNG,
Attorney for Defendant.

I hereby certify that, in my opinion, this demurrer is well founded in points of law.

E. B. YOUNG,
Attorney for Defendant.

(Endorsed:) Due service of the within demurrer, and receipt of a copy thereof, admitted this 10th day of July, A. D. 1885. S. G. Hilborn, att'y for plaintiff. Filed July 10, 1885. L. S. B. Sawyer, clerk.

56 *Order sustaining demurrer.*

At a stated term, to wit, the July term, A. D. 1890, of the circuit court of the United States of America of the ninth judicial circuit, in and for the northern district of California, held at the court room in the city and county of San Francisco, on Monday, the 15th day of September, in the year of our Lord one thousand eight hundred and ninety.

Present: The honorable Lorenzo Sawyer, circuit judge.

THE UNITED STATES OF AMERICA
vs.
MONROE SALISBURY. } No. 3630.

The demurrer to the complaint herein heretofore argued and submitted to the court for consideration and decision having been duly consid-
57 ered, it is ordered that said demurrer be and the same hereby is sustained, the complaint dismissed, and judgment entered herein accordingly.

58 *Judgment.*

In the circuit court of the United States, ninth judicial circuit, northern district of California.

THE UNITED STATES OF AMERICA
vs.
MONROE SALISBURY. } No. 3630.

The court having sustained the demurrer of defendant to the complaint of plaintiff and ordered that said plaintiff's complaint herein be dismissed:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the court that the plaintiff take nothing by this action, and that the defendant go hereof without day.

Judgment entered September 15, 1890.

L. S. B. SAWYER, *Clerk.*

59 I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 15th day of September, A. D. 1890.

[SEAL.] L. S. B. SAWYER, *Clerk.*

(Edorsed:) Filed September 15, 1890. L. S. B. Sawyer, clerk.

60 In the circuit court of the United States, ninth judicial circuit, in and for the northern district of California.

UNITED STATES
vs.
M. SALISBURY. } No. 3630.

I, L. S. B. Sawyer, clerk of the circuit court of the United States, for the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the jugdment roll in the above-entitled action.

Attest my hand and the seal of said circuit court, this 15 day of Sept., 1890.

[SEAL.] L. S. B. SAWYER,
Clerk,
By F. D. MONCKTON,
Deputy Clerk.

(Endorsed:) Judgment roll. Filed Sept. 15, 1890. L. S. B. Sawyer, clerk. By F. D. Monckton, deputy clerk.

61 In the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California.

THE UNITED STATES OF AMERICA,
plaintiff,
vs.
MONROE SALISBURY, DEFENDANT. } No. 3630.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify that the foregoing sixty written and printed pages, numbered from 1 to 16, inclusive, are a full, true, and correct copy of the record and of the proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

62 Witness my hand and the seal of said circuit court, this 22d day of April, A. D. 1891.

[SEAL.] L. S. B. SAWYER, *Clerk.*

63 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the judges of the circuit court of the United States of the ninth judicial circuit, in and for the northern district of California, greeting:

Because in the record and proceedings, and also in rendition of the judgment of a plea which is in the said circuit court, before you between The United States of America, plaintiffs and plaintiffs in error, and Monroe Salisbury, defendant and defendant in error, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the fourteenth day of May next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of March, in the year of our Lord one thousand eight hundred and ninety-one, and of the independence of the United States the one hundred and fifteenth.

[SEAL.] L. S. B. SAWYER,
Clerk of the Circuit Court of the United States for the Northern District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
Circuit Judge, Ninth Judicial Circuit.

64 The answer of the judges of the circuit court of the United States for the northern district of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the court:

[SEAL.] L. S. B. SAWYER, *Clerk.*

(Indorsed:) No. 3630. United States Supreme Court. The United States of America, plaintiffs and plaintiffs in error, vs. Monroe Salisbury, defendant and defendant in error. Writ of error. Filed April 15, 1891, L. S. B. Sawyer, clerk.

65 United States of America, ss., to Monroe Salisbury, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the 14th day of May, A. D. 1891, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States of America of the ninth judicial circuit, in and for the northern district of California, wherein The United States of America are plaintiffs and plaintiffs in error, and you are defendant and defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Lorenzo Sawyer, judge of the circuit court of the United States of America, of the ninth judicial circuit, this 16th day of March, A. D. 1891, and of the Independence of the United States the one hundred and fifteenth.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

66 (Indorsed:) No. 3630. In the Supreme Court of the United States. The United States of America, plaintiffs and plaintiffs in error vs. Monroe Salisbury, defendant and defendant in error. Citation. Service of a copy of the within citation is hereby admitted this 15th day of April, 1891. E. B. Young, att'y for defendant and defendant in error. Filed April 15, 1891. L. S. B. Sawyer, clerk.

67 (Indorsement on cover:) Supreme Court U. S., clerk's office. Received May 16, 1891. No. 169. 14646. The United States, plaintiff in error, vs. Monroe Salisbury. N. California, C. C. U. S. Filed May 16, 1891.